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Counsel to Saylavee, LLC

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In re:

DUCKY INTERACTIVE, INC

Case No. 05-23456

Debtor,

(Chapter 7)

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Saylavee, LLC,

Appellant,

v.

No. 7:08 CV. 01897 (SCR) (LMS)

Ducky Interactive, Inc., Scott B. Hockler,  
and Jeffrey L. Sapir, Esq.,

Before Hon. Stephen C. Robinson

Appellees',

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**MOTION FOR FURTHER AND FINAL EXTENSION OF TIME FOR FILING OF  
BRIEF ON APPEAL PURSUANT TO RULE 8009(a) Fed. R. Bankr. P.**

Appellant, Saylavee, LLC., ("Saylavee") by its counsel Neubert, Pepe, & Monteith, P.C. (by Louis J. Testa, Esq.) as and for a motion, pursuant to Rule 8009(a) Fed. R. Bankr. P.<sup>1</sup>, seeking entry of an order granting a further and final extension extending the period of time for Saylavee to file a brief on appeal in this action, states the following as grounds therefore:

**BACKGROUND**

1. On January 14, 2008, Saylavee filed a Notice of Appeal ("Appeal") from the

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<sup>1</sup> Unless otherwise stated all references to "Rule" or "Rules" shall mean the Federal Rules of Bankruptcy procedure.

Order (“Bankruptcy Order”) of the Honorable Adlai Harding Jr., United States Bankruptcy Judge entered in the Bankruptcy Case of Ducky Interactive, Inc., (“Bankruptcy Case”) on January 4, 2008 (Doc No. 150).

2. The Bankruptcy Order denied Saylavee’s motion for an order directing entry of judgment pursuant 11 U.S.C. § 303(i).

3. On February 26, 2008, the Appeal was entered on the docket of the United States District Court, Southern District of New York pursuant to Rule 8007 and was assigned the civil action number referenced above.

### **RELIEF REQUESTED**

4. Saylavee now seeks entry of an Order pursuant to Rule 8009 (a) extending, until September 15, 2008, the time within which Saylavee, as Appellant is required to file and serve a brief in this Appeal pursuant to Rule 8009 (a)(1).

### **GROUND FOR RELIEF**

5. Pursuant to Rule 8009(a) unless otherwise ordered by the District Court, an appellant shall serve and file a brief pursuant to Rule 8009 (a)(1) within fifteen (15) days after entry of the appeal on the docket.

6. The Court has previously designated June 30, 2008<sup>2</sup> (“Brief Due Date”) as the time for Saylavee to file and serve its brief in this case.

7. Pursuant to Rule 8011(b) motions for procedural orders may be acted on by the Court at any time without awaiting a response thereto and without hearing. Any party adversely affected by any such action may move for consideration or vacation or modification of the action. (Emphasis Added)

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<sup>2</sup> See Memo Endorsement of counsel’s letter to Court dated May 28, 2008, a copy of which is annexed hereto as Exhibit “A”.

8. It is with respectively submitted that the relief requested herein is the type of motion envisioned as one for a procedural order under Rule 8011(b).

9. Sufficient grounds exist to grant the relief requested by Saylavee which include but are not limited to the following:

(a) The instant appeal is one of three (3) filed in close proximity which, to a significant degree, contain overlapping issues of law and fact sought to be addressed on appeal;<sup>3</sup> and

(b) Each of the appeals have been designated as related and are assigned to the same district judge and magistrate judge; and

(c) By way of memo endorsement of counsel's letter dated April 21, 2008<sup>4</sup>, the Court ordered that the Appeals be consolidated for purposes of filing a consolidated brief on appeal ("Consolidated Brief"); and

(d) The combined content of the issues and facts raised on appeal are extensive and additional time is required to adequately brief the issues for the Court than that provided under the prior extension due to the circumstances described below; and

(e) Unfortunately, despite diligent effort expended since the date of the last extension, counsel for Saylavee has been unsuccessful in its attempts to negotiate a settlement of the Appeals with the Trustee and Scott B. Hockler, a litigant in the underlining actions thereby necessitating the filing of the Consolidated Brief by the current Brief Due Date; and

(f) Due to unforeseen circumstances which have arisen since the date of the prior extension the litigation and work schedule of counsel for Saylavee has been significantly

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<sup>3</sup> Civil Action Nos.: 7:08-CV-01897 (SCR), 7:08-CV-01901 (SCR), and 7:08-CV-01903 (SCR), (collectively the "Appeals")

<sup>4</sup> See Exhibit "B" annexed hereto

disrupted and, together with the scheduling of additional Court ordered matters throughout July and August as described in paragraph 10 below, counsel for Saylavee is now constrained to request a further and final extension at this time within which to file the Consolidated Brief; and

(g) Counsel for Saylavee has been informed that neither Scott B. Hockler nor the Trustee individually or on behalf of the Debtor intend to participate in the Appeals; and

(h) No party in interest shall suffer prejudice or irreparable harm as a result of the requested extension of time.

10. The matters referred to by counsel in paragraph 9(f) above include, but are not limited, to the following:

(a) Counsel, currently serves as Trustee under 11 U.S.C. § 1104 in a pending case in Connecticut that has been subject to unexpected emergency motions and contested hearings requiring daily attention over the last two (2) weeks pertaining to a sale of substantially all assets of the estate presently scheduled for auction on July 2, 2008 and a sale hearing on July 3, 2008; these circumstances were unforeseeable due to the replacement, via transfer, of the holder of the alleged first lien on the property to be sold; and

(b) Counsel is under a Court ordered discovery bar date for August 15, 2008, in a complex adversary proceeding pending in the United States Bankruptcy Court for the District of Connecticut requiring, prior to that time, no less than four (4) depositions, a document production, and written interrogatories with witnesses both out of state and international with a Trial date of September 10, 2008; and

(c) Counsel is also under a Court ordered discovery bar date for August 15, 2008, for a matter pending in the United States Bankruptcy Court for the Southern District of New York (White Plains Division) requiring depositions (2) prior to that time and an expected

trial date to be held in the first week of September; and

(d) Counsel has been scheduled to be out of state for the week of July 27<sup>th</sup>, returning to the office on August 1, 2008 on a vacation scheduled since August of 2007; and

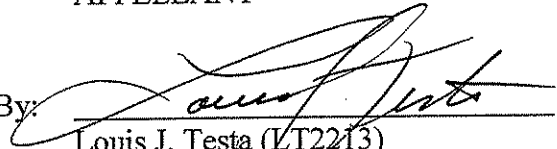
(e) The July 4<sup>th</sup> holiday occurs during this period of time.

11. As noted above this is counsel's final request for such an extension. In the event, however, the instant motion is not granted by the Court, counsel respectfully requests a period of no less than two (2) weeks from entry of an order denying this motion within which to file the Consolidated Brief.

Wherefore, Saylavee, LLC respectfully requests that the Court issue an Order, pursuant to Rules 8009(a) and 8011 (b) Fed. R. Bankr. P., extending the time within which Saylavee shall be required to file a brief on appeal, without awaiting a response to this motion and without a hearing, from June 30, 2008 until September 19, 2008, or such alternative relief requested above in the event of denial of this motion, and for such other and further relief that the Court may deem just and proper.

Dated: New Haven, Connecticut  
June 27, 2008

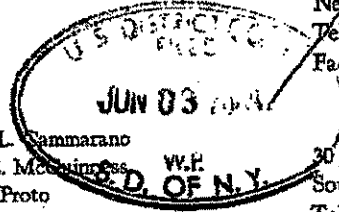
SAYLAVEE, LLC  
APPELLANT

By:   
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# EXHIBIT A

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MONTEITH, P.C.  
Attorneys At Law

MEMO ENDORSED



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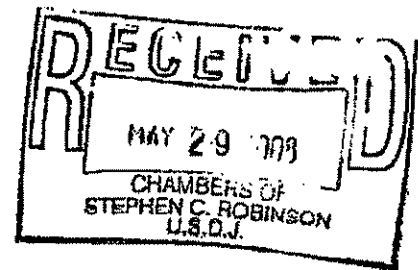
\*Admitted in New York Only

Reply to P.O. Box  
www.npmilaw.com

May 28, 2008

**VIA FACSIMILE (914-390-4179) AND OVERNIGHT MAIL**

The Honorable Stephen C. Robinson  
U.S. District Judge  
United States Bankruptcy Court  
Southern District of New York  
300 Quarropas Street, Room 633  
White Plains, NY 10601-4150



Re: Ducky Interactive, Inc. (Chapter 7) 05-23456; Saylavee LLC Appellant v. Ducky Interactive, Inc., Scott B. Hockler, and Jeffrey L. Sapir, Esq. Appellees Civil Action Numbers. 7:08 CV 1897, 1901, and 1903

Dear Judge Robinson:

Our firm represents the Appellant, Saylavee LLC in each of the three (3) appeals ("Appeals") referenced above.

Please view this letter as a confirmation of, and a follow-up to, my telephone conversation of May 28, 2008 with your law clerk, Brandon.

The purpose of this letter is to request a further extension of time until **June 30, 2008** within which to file briefs on appeal in each of these matters. For which an extension was previously granted by the court until April 29, 2008.

The primary ground for this request is that we are awaiting a response from the trustee to resolve each of these matters without further need for judicial intervention. In addition, as noted in my earlier correspondence of April 21, 2008 counsel for the debtor, Ducky Interactive, Inc. and Scott B. Hockler have indicated that they do not intend to participate in these appeals.

Per Brandon's request I contacted the trustee, Jeffrey L. Sapir, Esq. and confirmed that he has no opposition to a further extension until June 30, 2008.

APPLICATION GRANTED

*Stephen C. Robinson*  
6/2/08

This is a request pursuant to Rule 8011(b) Fed. R. Bankr. P., for issuance of a procedural order. Pursuant to this Rule the court is authorized to act at any time without awaiting a response and without a hearing. In addition the request is grounded under Rule 8009(a) Fed. R. Bankr. P., which is, in effect a scheduling order permitting the district court to alter the schedule in any manner that it deems appropriate.

Please do not hesitate to contact me if you have any questions in regard to the foregoing or require further information with respect to this request.

Thank you for your time and consideration of this matter.

Respectfully yours,



Louis J. Testa

LJT/lis



# EXHIBIT B

NEUBERT,  
PEPE &  
MONTEITH, P.C.  
Attorneys At Law

## MEMO ENDORSED

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Reply to P.O. Box  
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April 21, 2008

### VIA FACSIMILE (914-390-4179) AND OVERNIGHT MAIL

The Honorable Stephen C. Robinson  
U.S. District Judge  
United States Bankruptcy Court  
Southern District of New York  
300 Quarropas Street, Room 633  
White Plains, NY 10601-4150

Re: Ducky Interactive, Inc. (Chapter 7) 05-23456; Saylavec LLC Appellant v. Ducky  
Interactive, Inc., Scott B. Hockler, and Jeffrey L. Sapir, Esq. Appellees Civil Action  
Numbers. 7:08 CV 1897, 1901, and 1903

Dear Judge Robinson:

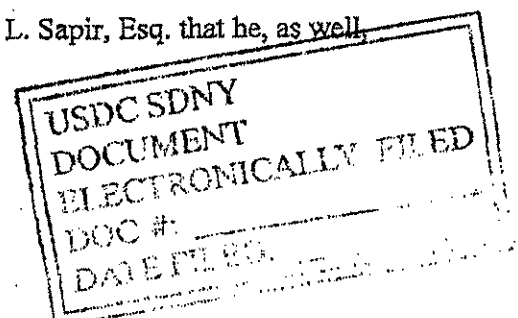
Our firm represents the Appellant, Saylavec LLC in each of the three (3) appeals  
("Appeals") referenced above.

Please view this letter as a confirmation of, and a follow-up to, my telephone  
conversation of April 21, 2003 with your law clerk, Brandon.

On March 19, 2008, the Court entered separate orders in each of the Appeals granting our  
client's application for extension of time for filing briefs on appeal pursuant to Rule 8009(a) Fed.  
R. Bankr. P. The extensions were granted until April 29, 2008.

The purpose of this letter to request a further extension of time until May 30, 2008 within  
which to file the briefs on appeal in each of these matters for the following reasons:

- a. I have been informed by counsel for the debtor, Ducky Interactive, Inc.,  
and Scott B. Hockler that they have not been retained nor intend to participate in the Appeals at  
this time; and
- b. I have been informed by the Trustee Jeffrey L. Sapir, Esq. that he, as well,  
does not anticipate participating in any of the Appeals; and



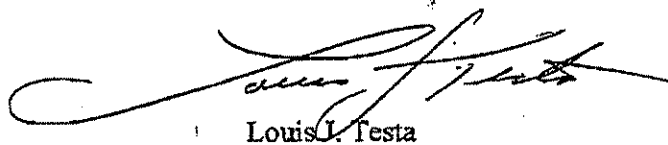
c. I have undertaken discussions with the Trustee with an aim of possibly settling all of the issues raised in these Appeals and would request additional time to do so; and  
d. The settlement may also affect two earlier appeals presently pending before your Honor in the same main Bankruptcy Case; and  
e. No party in interest shall suffer prejudice as result of the granting of the relief requested at this time.

In addition, I would like bring to the Courts' attention the overlapping nature of these appeals and would request that the Court consider either joining or consolidated these appeals for briefing and oral argument purposes. The Appeals have been designated as related. I believe that the issues raised may be briefed in one memorandum and addressed in one oral argument.

Please do not hesitate to contact me if you have any questions in regard to the foregoing or require further information with respect to this request.

Thank you for your time and consideration of this matter.

Respectfully yours,



Louis J. Festa

LJT/lis

Appellant may file a consolidated  
brief for 08cv1897, 08cv1901  
and 08cv1903. Time to  
file the brief is extended  
to 5/30/08.

APPLICATION GRANTED



HON. STEPHEN C. ROBINSON

4/22/08.